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10/521,480	01/18/2005	Peterjan Van Nieuwenhuizen	36-1882	6986

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EXAMINER
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2416	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/521,480	VAN NIEUWENHUIZEN, PETERJAN
	Examiner	Art Unit	
	CANDAL ELPENORD	2416	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>09 April 2008</u>.

2a) ☒ This action is FINAL.　　2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-20</u> is/are pending in the application.

　　4a) Of the above claim(s) <u>4 and 16-19</u> is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-3,5,7,9-12,14,15 and 20</u> is/are rejected.

7) ☒ Claim(s) <u>6,8,13 and 15</u> is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>June 19, 2003</u> is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a) ☒ All　b) ☐ Some * c) ☐ None of:

　　　　1. ☒ Certified copies of the priority documents have been received.

　　　　2. ☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date <u>July 17, 2007, April 09, 2008, July 23, 2008</u>.

4) ☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claims 1, 2-3, 5-15, 20 have been

considered but are moot in view of the new ground(s) of rejection.

2.   Claims 1, 10, 20 have been amended, and claims 4, 16-19 have been cancelled.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

4.   Claims 1.5, 5-15, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by

Barham et al (US 7,284,047 B2).

     Regarding claim 1, Barham '047 discloses a method of controlling the rate of

data transmission (see, controlling the transmission data rate based on the user

willingness to pay and congestion pricing, col. 3, lines 60 to col. 4, lines, col. 14, lines

42-51) from a source of data (noted: data flow of a web connection, col. 8, lines 62-66)

to user (fig. 1 to fig. 3, User/Client) via a communications link (fig. 2, fig. 4, see the

transmission link between the source and the destination, col. 8, lines 28-37), wherein

processing means (fig. 2, fig. 4, see the token bucket shaper in combination with

packet rate controller, packet scheduler with means for setting up the price data signal

which then used to control the rate at which the application can transmit, col. 14, lines

42-51) are provided to generate a signal representing a rate request which will be used

in determining the rate at which data will be transmitted from the source (fig. 2, fig. 4,

see the token bucket shaper in combination with packet rate controller with means for

setting up the price data signal which then used to control the rate at which the

application can transmit, col. 14, lines 42-51) to the user (noted: determined price

based congestion signal by the which the computing device controls transmission is

communicated, col. 12, lines 9-21, noted: load notification message and flow weight

parameter in which the transmission is adjusted accordingly, col. 8, lines 48-51, lines

55-60), said processing means generating the signal by carrying out (fig. 2, fig. 4, see

the token bucket shaper in combination with packet rate controller with means for

setting up the price data signal which then used to control the rate at which the

application can transmit, col. 14, lines 42-51) the steps of: obtaining an indication of

the amount of congestion on said communications link (noted: determination of

congestion and pricing based on measured load, col. 12, lines 9-21, noted: using the

flow weight parameter and the network load to determine and introduce a bottleneck

flow, col. 9, lines 3-12), selecting a value indicative of the user's willingness to pay for a

given transmission data rate (noted: the application/user equipment transmitting

packets at transmission rate based on willingness value/ability to pay, col. 12, lines 9-

21), and determining the rate to be requested as a function of the indication of a

difference between the user's willingness to pay and a congestion cost which is the

product of congestion (noted: determining the rate for price congestion according to the

willingness to pay, col. 16, lines 16-58) and a previously determined data transmission

rate (noted: first determined transmission rate which is then adjusted based on the

willingness ability to pay, col. 16, lines 16-44), the difference being weighted by a

variable parameter (noted: fluctuating price in combination with the variable measured

load, pricing per unit of data packets(i.e. congestion indication, bottleneck scenario),

col. 13, lines 60 to col. 14, lines 17, col. 15, lines 29-63) the processing means

thereafter communicating the signal to the source of data (see, the load calculation

mechanism in combination with the price calculation mechanism compute the price

based on load information and broadcasts via message the price information to other

devices, col. 13, lines 60 to col. 14, lines 17) and the rate of the data transmission from

the data source to the user then being controlled on the basis of the signal (noted: the

packet rate controller and the packet scheduler using the pricing signal to determine

the transmission rate of packets, col. 14, lines 42-54).

   Regarding claim 2, Barham '047 discloses a method (see, controlling the

transmission data rate based on the user willingness to pay and congestion pricing,

col. 3, lines 60 to col. 4, lines 4, col. 14, lines 42-51), wherein said variable parameter

assumes discrete values (noted: willingness values in combination with the congestion

pricing, col. 16, lines 16-29).

   Regarding claim 3, Barham '047 discloses a method (see, controlling the

transmission data rate based on the user willingness to pay and congestion pricing,

col. 3, lines 60 to col. 4, lines 4, col. 14, lines 42-51), wherein the value of said variable

parameter varies continuously (noted: fluctuating price in combination with the variable measured load, pricing per unit of data packets (i.e. congestion indication, bottleneck scenario), col. 13, lines 60 to col. 14, lines 17, col. 15, lines 29-63).

Regarding claim 4, Barham '047 discloses a method (see, controlling the transmission data rate based on the user willingness to pay and congestion pricing, col. 3, lines 60 to col. 4, lines 4, col. 14, lines 42-51), wherein the indication of congestion is the product of a congestion charge (noted: determining the rate for price congestion according to the willingness to pay, col. 16, lines 16-58) and a previously determined data transmission rate (noted: first determined transmission rate which is then adjusted based on the willingness ability to pay, col. 16, lines 16-44).

Regarding claim 5, Barham '047 discloses a method (see, controlling the transmission data rate based on the user willingness to pay and congestion pricing, col. 3, lines 60 to col. 4, lines 4, col. 14, lines 42-51), wherein the value of said variable parameter varies in accordance with the difference between the user's willingness to pay and the indication of the amount of congestion (noted: fluctuation of the pricing (i.e. increase or decrease) based on network load, congestion, col. 14, lines 9-16, col. 16, lines 16-29, lines 45-57).

Regarding claim 7, Barham '047 discloses a method, wherein if the difference between the indication of the amount of congestion and the user's willingness to pay falls within a predetermined range a first data rate is requested (noted: transmitting at

rate commensurate with the congestion pricing and the network load, col. 12, lines 35-46), and if the difference between the indication of the amount of congestion and the user's willingness to pay falls outside the predetermined range a second different data rate is requested (noted: the load exceeding a threshold of the capacity where the willingness pricing is increased, col. 14, lines 3-17, noted: adjusting the transmission rate based on the congestion pricing and the willingness to pay, col. 16, lines 29).

Regarding claim 9, Barham '047 discloses a method (see, controlling the transmission data rate based on the user willingness to pay and congestion pricing, col. 3, lines 60 to col. 4, lines 4, col. 14, lines 42-51) said step of providing an indication of amount of congestion includes determining a marking rate m of incoming data transmitted on said communications link (noted: determining the bandwidth of the incoming packets, col. 14, lines 62 to col. 15, lines 15) and wherein said congestion charge is determined from said marking rate (noted: updating of congestion pricing based on the bandwidth of the packets, col. 13, lines 60 to col. 14, lines 15, col. 15, lines 65-67).

Regarding claim 10, Barham '047 discloses a rate controller (fig. 2 in combination with fig. 4, Packet rate controller 422 controlling the rate of transmission based the willingness to pay, col. 14, lines 42-58) for controlling the rate of data transmission from a source (noted: data flow of a web connection, col. 8, lines 62-66) to a user (fig. 1 to fig. 3, User/Client) via a communications link (fig. 2, fig. 4, see the

transmission link between the source and the destination, col. 8, lines 28-37, noted:

controlling the rate of transmission based on the willingness of the application to pay,

col. 16, lines 16-28), said rate controller (fig. 2 in combination with fig. 4, Packet rate

controller 422 controlling the rate of transmission based the willingness to pay, col. 14,

lines 42-58) including processing means for generating a signal representing a rate

request which will be used in determining the rate at which data will be transmitted

from the source to the user (fig. 2, fig. 4, see the token bucket shaper in combination

with packet rate controller, packet scheduler with means for setting up the price data

signal which then used to control the rate at which the application can transmit, col. 14,

lines 42-51, noted: determined price based congestion signal by the which the

computing device controls transmission is communicated, col. 12, lines 9-21, noted:

load notification message and flow weight parameter in which the transmission is

adjusted accordingly, col. 8, lines 48-51, lines 55-60)), said processing means

including means for obtaining a congestion charge indication for the communications

link (noted: determination of congestion and pricing based on measured load, col. 12,

lines 9-21, noted: using the flow weight parameter and the network load to determine

and introduce a bottleneck flow, col. 9, lines 3-12), selecting means for selecting a

value indicative of the user's willingness to pay for a given transmission data rate

(noted: the application/user equipment transmitting packets at transmission rate based

on willingness value/ability to pay, col. 12, lines 9-21), determining means for

determining the rate to be requested as a function of the difference between the

user's willingness to pay and a congestion cost which is the product of a congestion

charge (noted: determining the rate for price congestion according to the willingness to

pay, col. 16, lines 16-58) and a previously determined data transmission rate (noted:

first determined transmission rate which is then adjusted based on the willingness

ability to pay, col. 16, lines 16-44), the difference being weighted by a variable

parameter (noted: fluctuating price in combination with the variable measured load,

pricing per unit of data packets(i.e. congestion indication, bottleneck scenario), col. 13,

lines 60 to col. 14, lines 17, col. 15, lines 29-63), and means further including means

for communicating the signal to the source (see, the load calculation mechanism in

combination with the price calculation mechanism compute the price based on load

information and broadcasts via message the price information to other devices (i.e.

user application/equipment), col. 13, lines 60 to col. 14, lines 17), wherein the rate of

the data transmission from the source to the user is controlled on the basis of the

signal (noted: the packet rate controller and the packet scheduler using the pricing

signal to determine the transmission rate of packets, col. 14, lines 42-54).

     Regarding claim 11, please see the Examiner comments with respect to claim 5

as discussed above.

     Regarding claim 12, please see the Examiner comments as discussed with

respect to claim 7 as discussed above.

     Regarding claim 14, please see the Examiner comments with respect to claim 9

as discussed above.

Regarding claim 20, Barham '047 discloses a computer readable medium

encoded with computer executable instructions executable by the processor (fig. 1,

system memory with computer readable medium for storing instructions executed by

the processor for carrying out charging based on the congestion and the willingness to

pay, col. 6, lines 21-67, col. 4, lines 60 to col. 4, lines 3) to perform the steps of claim1.

Allowable Subject Matter

5.   **Claims 6, 8, 13, 15** are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. Kirkby et al (US 6,556,548 B1) and Litwin et al (US

2003/0145098 A1).

7.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to CANDAL ELPENORD whose telephone number is

(571)270-3123. The examiner can normally be reached on Monday through Friday

7:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kwang Bin Yao can be reached on (571) 272-3182. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Candal Elpenord/

Examiner, Art Unit 2416

/Kwang B. Yao/
Supervisory Patent Examiner, Art Unit 2416